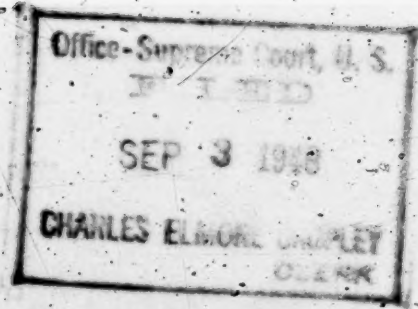


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**No. 179**

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1948**

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**LILLIAN A. WEADE, FREDERICK M. WEADE and ROBERTA L.  
STINEMEYER, *Petitioners,***

**v.**

**DICHMANN, WRIGHT & PUGH, INCORPORATED.**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

---

**BRIEF FOR THE RESPONDENTS IN OPPOSITION**

**LEON T. SEAWELL  
*Attorney for Respondent***

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## **BRIEF FOR THE RESPONDENTS IN OPPOSITION**

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### **OPINIONS BELOW**

The opinion letters of the District Court of the United States for the Eastern District of Virginia (R. 29-31) are not reported. The opinion of the Court of Appeals for the Fourth Circuit (R. 234-238) is reported in 1948 A. M. C. 1153.

## JURISDICTION

The decree of the Court of Appeals for the Fourth Circuit was entered May 13, 1948 (R. 239). The petition for certiorari was filed July 27, 1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Whether in the special circumstances of the case respondent violated any duty to petitioners by failing to exercise due care in performing its contractual obligation to the United States to procure proper and sufficient persons for employment by the United States as civilian government seamen on a government vessel operated by the United States and husbanded by respondent.

## STATUTES AND REGULATIONS INVOLVED

The statutes and regulations relating to the status and control of War Shipping Administration seamen, i. e., Revised Statute 1753 (5 U. S. Code 631), together with the applicable Civil Service Rules and War Shipping Administration Operations Regulations No. 12, Supplement No. 1 and No. 15 Directive No. 2, are set forth in Appendix A, *infra*, pp. 16 *et seq.* Other related Operations Regulations are summarized in Appendix B, *infra*, pp. 22 *et seq.*

## STATEMENT

Respondent Diehmann, Wright & Pugh, Inc., was a ship's husband or general agent employed by the United States under the wartime standard form GAA 4-4-42 serv-



ice agreement to manage and conduct the accounting and certain other shoreside business operations of the SS METEOR and other vessels owned and operated by the United States through the War Shipping Administration (R. 102-122).<sup>1</sup> With respect to the manning of the vessel, Article 3 A' (d) of the wartime standard form agreement (R. 104) provided:

(d) The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder.

By reason of such employment on a War Shipping Administration operated vessel, the master and crew of the METEOR were technically civil service employees of the United States in the unclassified service exempt from examination under Section xxi (1) of Schedule A to the Civil Service Rules (5 Code of Fed. Regs., 1943 Cum. Supp., p. 1488, sec. 50.21 (Ex. O. No. 9004, December 30, 1941, 7 Fed. Reg. 2)). With respect to the transportation of passengers

<sup>1</sup> War Shipping Administration Form GAA 4-4-42, 7 Fed. Reg. 7561, 7562; 46 C. F. R., 1943 Cum. Supp., p. 11427, sec. 306.44.

by the United States, Article 3. A. (f) of the wartime standard form agreement (R. 121) restricted the duties of respondent respecting their transportation as follows:

(f) Shall arrange for the transportation of passengers when so directed, and issue or cause to be issued to such passengers customary passenger tickets. After a uniform passenger ticket shall have been adopted by the United States, such passenger ticket shall be used in all cases as soon as practicable after receipt thereof by the General Agent. Pending the issuance of such uniform passenger ticket, the General Agent may continue to use its customary form of passenger ticket.

Respondent was thereby confined to issuing tickets and arranging with the ship masters, to whom the War Shipping Administration entrusted its vessels, for the transportation of such passengers.

Originally petitioners brought two separate suits against respondent alone<sup>2</sup> and petitioner Lillian A. Weade brought a separate suit against the United States alone.<sup>3</sup> Recovery of damages was sought in each instance because of certain occurrences which took place while petitioners Lillian A. Weade and Roberta L. Stinemeyer were passengers aboard the METEOR. The suit against the United States was held in abeyance while the two suits against respondent were ordered consolidated for trial (R. 13) and gave rise to the present proceedings.

<sup>2</sup> *Roberta L. Stinemeyer v. Dichmann, Wright & Pugh, Inc., and George C. Hudgins*, United States District Court, Eastern District of Virginia, Norfolk Division, Civil No. 616, and *Lillian A. Weade and Frederick M. Weade v. Dichmann, Wright & Pugh, Inc., and George C. Hudgins*, United States District Court, Eastern District of Virginia, Norfolk Division, Civil No. 617.

<sup>3</sup> *Lillian A. Weade v. United States of America*, United States District Court, Eastern District of Virginia, Newport News Division, Admiralty No. 80.

The complaints against respondent alleged that the METER was operated by respondent as a common carrier and that petitioners were injured because of respondent's failure to provide protection for respondent's sleeping passengers against the personal misconduct of respondent's employees, because of respondent's failure to use due care to select competent and careful employees, and because of respondent's failure to provide reasonable safeguards for the protection of passengers on the vessel and comply with the laws relating thereto. (Weade, para. 2, R. 2; Stinemeyer, para. 2, R. 8). Respondent answered denying generally the charges of negligence and want of care and in particular denying that it was a common carrier or that it owned or operated the vessel (R. 5, 10) or that the master, officers and crew of the vessel were its employees (R. 5-6, 11). Respondent alleged that, on the contrary, the METER was operated by the United States of America, War Shipping Administration, that it was manned by government employees, and that respondent's only relation to the vessel was that of general agent servicing the vessel in accordance with the provisions of the standard form of agency agreement (R. 5-6, 11-12).

The facts which gave rise to petitioners' claims against respondent can be briefly summarized. Petitioners Lillian A. Weade and Roberta L. Stinemeyer were passengers on the SS METER, a vessel owned and operated by the United States through the War Shipping Administration, between Norfolk and Washington. In accordance with Article 3 A (f) of the agency agreement (R. 121), respondent, as agent for the United States, sold and issued to Mrs. Weade and Mrs. Stinemeyer tickets in the standard form prescribed by the War Shipping Administration. This standard form of ticket (R. 27) expressly stated that it was "issued by Washington-Hampton Roads Line, operated by United States of America, War Shipping Administration."



and the name of respondent as printed on the ticket plainly indicated that it was not operator of the METEOR, but was merely agent for the United States in issuing the ticket and arranging for the transportation. Mrs. Weade and Mrs. Stinemeyer retired to their stateroom about 11:00 p. m., the night of August 3, 1945, Mrs. Stinemeyer taking the upper berth and Mrs. Weade the lower. The weather was hot and they attempted to obtain the maximum ventilation. Despite the warning notice posted in the stateroom that passengers must keep the windows or shutters closed during the night, Mrs. Weade and Mrs. Stinemeyer left the door into the passageway ajar and also left open the window, which looked out upon the boat deck, leaving both the glass and the shutter open and down. About three o'clock of the following morning, a man entered the room by way of the open window, assaulted Mrs. Weade and left the room by the same window. The second cook of the vessel, a negro named Jack Lester Barnes, was subsequently tried, convicted and executed for the offense.

Concerning any negligence or fault on the part of respondent or its own shoreside employees the record is barren of evidence. There was no evidence to support petitioners' charge that respondent was negligent in procuring the colored cook for employment. He afterward proved to have had a criminal record (R. 168-171) but there was no evidence that this was known or should have been known to respondent. He was furnished to respondent by the Government from the pool maintained by the War Shipping Administration Recruitment and Manning Organization for the benefit of general agents in performing their duty of procuring men for government vessels (R. 92). He had been approved by the W. S. A. and the Coast Guard and no reason for an additional investigation by respondent was known (R. 77, 78). It appears that the

night of the occurrence Barnes had been drinking which was contrary to the regulations of "the company" as well as the United States (R. 58-59). But there was no evidence that he had done so before or that the Government's shipmaster, much less respondent's shoreside personnel, was aware of such conduct. On the contrary, so far as was known, Barnes was unusually quiet and orderly (R. 93). Nor was there any evidence in support of petitioners' charge that respondent had failed to procure proper or sufficient watchmen. The watchman assigned by the master to the deck where the stateroom of Mrs. Weade and Mrs. Stinemeyer was situated possessed the proper seaman's certificates (R. 98, 222). He was properly instructed by the Government's master and officers in his duty to patrol inside and outside every twenty to thirty minutes and remain alert and appears to have done so (R. 99, 223-225). While some question was raised on cross-examination of the master as to the sufficiency of the number of watchmen (R. 55-57) there was no evidence that the master had requested and respondent had neglected to procure additional men when so requested.

The trial court instructed the jury that the relation of respondent to petitioners was that of a common-carrier which owed Mrs. Weade and Mrs. Stinemeyer the duty to "use the utmost or highest degree of practicable care and diligence" and that respondent "was the principal and operator of the steamship METEOR at the time in question" (R. 16-17, 20). A verdict against respondent resulted and a motion for judgment notwithstanding the verdict was denied, the district judge holding that "While the case of *Hust v. Moore-McCormack Lines, Inc.*, 328 U. S. 707, is not precisely in point, it is my view that it is controlling" (R. 29). Judgment for petitioners was entered accordingly (R. 32). On appeal, the court below reversed, in an opinion

which held that respondent was not liable to passengers since it was not operating the vessel nor subject to the duty of a common carrier (R. 234-238). The court observed that if the lesser duty owed to an invitee was not to be attributed to the agent, under *Caldorola v. Eckert*, 332 U. S. 155, *a fortiori* the more onerous duty owned by a carrier to a passenger should not be here. The opinion did not discuss petitioners' contentions that respondent was negligent in performing its contractual duty to the United States and that petitioners are entitled to recover for damages alleged to have resulted therefrom.

### ARGUMENT

Petitioners concede (Pet. 16) they cannot charge respondent with vicarious liability for negligence of the civil service master, officers and crew with which the United States manned, navigated and physically managed the METEOR nor hold respondent liable for defective or dangerous conditions aboard a government-owned and operated vessel for which respondent was only ship's husband or shoreside agent. According to petitioners the issue here is "whether the general agent owed a duty to passengers and whether it was negligent in the fulfillment of that duty, which neglect proximately caused injury to the petitioners" (Pet. 16). It is common ground to petitioners and respondent, no less than to the United States as *amicus curiae* in the court below, that under *Brady v. Roosevelt SS. Co.*, 317 U. S. 575, government agents are liable for the actionable negligence of their own sub-agents and employees. But petitioners additionally contend (Pet. 3, 5, 7, 11) that they are entitled to recover from respondent if the latter can be found to have failed properly to perform its contractual duties to the United States to "procure and make available to the Master for engagement by him the officers,

and men required by him to fill the complement of the vessel" (R. 104) and to "arrange for the transportation of passengers when so directed" (R. 121). Petitioners argue that despite this Court's decision in *Caldarola v. Eckert*, 332 U. S. 155, the facts of this particular case are such that "the record clearly discloses sufficient bases for holding the general agent owner *pro hac vice* in possession and control of the vessel insofar as passengers are concerned" (Pet. 14). We submit that the issue raised by petitioners lacks substance as well as importance and that, having regard to this Court's decisions in *Robins Dry Dock & Repair Co. v. Flint*, 275 U. S. 303, 307, and *German Alliance Ins. Co. v. Home Water Co.*, 226 U. S. 220, 227, the court below correctly applied the *Caldarola* decision as fully dispositive of every question which is actually presented by the record in this case.

I. The heart of petitioners' contentions here is that the court below erred in failing to find that the equivalent of a carrier-passenger relationship existed between petitioners Lillian A. Weade and Roberta L. Stinemeyer, on the one hand, and respondent Diekmann, the Government's shoreside agent, on the other (Pet. 10-11, 12, 16). In aid of this contention petitioners repeatedly characterize respondent as "operating the vessel" (e.g. Pet. 3, 8, 14). Without regard to the fact that these supporting assertions by petitioners are contrary to the record, we submit that the effect of the wartime GAA 4-4-42 agreement on the rights of third parties transported by the United States as passengers aboard government-operated vessels presents no question which has not already been fully settled by this Court. *Caldarola v. Eckert*, 332 U. S. 155, is completely dispositive of the issue raised by petitioners. There, this Court plainly indicated that an injured third person could not claim that he "has rights under the agency con-

tract or that it created duties to third persons, *Robins Dry Dock & Repair Co. v. Flint*, 275 U. S. 303. \* \* \* so the narrow question is whether the agents were in possession and control of the *EVERAGRA*" (332 U. S. at 158). And, as the court below pointed out (R. 236-237), this Court emphatically indicated that by its previous decisions: "The Court did not hold that the agency contract made the agent for all practical purposes the owner of the vessel. It did not hold that it imposed upon him, as a matter of federal law, duties of care to third persons, more particularly to a stevedore under employment of a concern unloading the vessel pursuant to a contract with the United States" (332 U. S. at 159). It can make no difference that the third persons who are petitioners in this present case are more particularly passengers transported on the vessel pursuant to their contracts with the United States.

Nor is the agent's responsibility to passengers transported by the War Shipping Administration a matter of great public importance requiring decision by this Court (Cf. Pet. 8). The *Caldarola*, *Robins* and *German Alliance* cases appear dispositive and there is no conflict in the lower courts.<sup>4</sup> Petitioners concede that this appears to be a case of first impression (Pet. 6) and we are informed by the Department of Justice that only in four other instances have passengers brought independent suits against the agents of the Government. Of those, the Department's records show only two have thus far omitted to sue the

<sup>4</sup> The concurrence of the circuit courts is unanimous. *Publicker Industrial Alcohol Co. v. American-Hawaiian SS. Co.*, 165 F. 2d 1002 (suit by dock owner to recover for damages resulting in part from breach of agent's duty to Government to order sufficient tugs to safely undock vessel). Cf. *McGowan v. J. H. Winchester & Co.*, 1948 A. M. C. 1133 (C. C. A. 2); *Palardy v. American-Hawaiian SS. Co.*, decided August 4, 1948 (C. C. A. 2), suits by longshoremen and harbor workers.

Suits by passengers on government vessels are under the supervision of the Admiralty and Shipping Section of the Department and reports are received in respect of suits against agents as well as those against the United States itself. Pursuant to the agency agreement, the United



United States as well and in both the statute of limitations has over a year to run.<sup>6</sup> All others, like petitioner Lillian A. Weade here, have also filed suit against the United States and there can be no doubt of their right to recover from the United States if actionable negligence in the performance of the Government's work be proven.<sup>7</sup> It is immaterial whether the fault be that of the Government's civil-service master and crew or of the shoreside employees of the Government's agent. We accordingly submit that petitioner's application for certiorari presents no question requiring decision by this Court.

2. Petitioners urge that a reversal of the judgment below is compelled by the reasoning which motivated the decisions of this Court in *Brady v. Roosevelt*, 317 U. S. 575, and *Hust v. Moore-McCormack*, 328 U. S. 707 (Pet. 10, 12, 14). Petitioners seem to argue that those decisions establish that the legal rules of principal and agent, which regulate the liability to third parties of the agent for a disclosed private principal,<sup>7</sup> are modified so as to impose liability for breach of the agent's contractual obligations to his principal when the principal is the United States (Pet. 11, 16). In support of this argument, petitioners cite the language of Mr. Justice Douglas dissenting in the *Caldarola*

States is obligated for any recovery effected, whether by reason of the actionable negligence of the Government's master and crew or of the agent's shoreside employees, to the extent not covered by insurance (GAA 4-4-42, Arts. 8 and 16 (R. 110, 115)). On the standard form insurance which is obtained, the United States in effect assumes the reinsurance of the losses (House Merchant Marine and Fisheries Committee, Doc. No. 4, *Compilation of standard contract forms of the War Shipping Administration*, p. 847). The defense of such actions, whether against the agent or the United States, is undertaken by the Department of Justice whenever required by the public importance of the question involved.

<sup>6</sup> Enactment of the Government-seamens Relief Bill, H. R. 4873, 80th Cong., which passed the House too late to be acted on by the Senate before adjournment, will remove any danger that the right to sue the United States may become time barred. It extends the statute of limitations one year for any litigant whose suit is dismissed as improperly brought against the Government's agent.

<sup>7</sup> Cf. *Restatement of Agency*, §§ 343, 350, 352.

case (332 U. S. at 161) that "it is shocking to find private operators getting immunity in this manner for their traditional liability for tort claims" (Pet. 15). Petitioners imply that respondent here was an "operating agent" for the *METEOR* and conclude that this Court intended that it should be liable to third parties, particularly passengers, for negligent breach of its contractual obligations (Pet. 15).

But petitioners' argument is without foundation in the record. Unlike the situations presented in the *Brady* case, where the contract made Roosevelt "operating agent" for the vessel and was substantially a demise, and by the record in the *Hust* case, where the answer of Moore-McCormack admitted that it was the operator of the vessel (October Term 1945, No. 625, R. 6), which concession was accepted without discussion by a four-judge majority of this Court (see 328 U. S. at 717, 718, 720, 721, 724, 727, 730, 732), the record in this present case plainly shows respondent was not operating the vessel.<sup>8</sup> Here respondent's answers denied that it was operating the vessel (R. 5, 10) or that the master, officers and crew of the vessel were its

<sup>8</sup> It is not true, as petitioners imply (Pet. 6-7, 12, 14), that general agents husbanding the Government's vessels under the wartime GAA 4-4-42 agreement performed substantially the same functions as the operating agents to whom government vessels were formerly demised for operation under the four special peacetime "operating agreements" involved in *Brady v. Roosevelt SS. Co.*, 317 U. S. 575; *Quinn v. Southgate Nelson Corp.*, 121 F. 2d 190 (C. C. A. 2), certiorari denied 314 U. S. 682; and *Odgaard v. Cosmopolitan Shipping Co.*, 171 Misc. 244, 12 N. Y. S. 2d 389. On the contrary, the general agent's authority stops at the water's edge, for it is a mere ship's husband to manage and conduct the accounting and certain other shoreside business operations of the Government's vessels. See *Aird v. Weyerhaeuser SS. Co.*, decided August 4, 1948 (C. C. A. 3), slip opinion 2-3; *Gaynor v. Aguilines*, decided August 4, 1948. (C. C. A. 3) slip opinion 8-9. And see letter of the General Counsel, U. S. Maritime Commission, to Assistant Attorney General Sonnett, Reply Brief for Respondent Thor Zekert & Co., *Caldwara v. Eckert*, No. 625, Oct. T., 1946, Appendix, pp. 43-66. Operation of the vessels themselves is directly by the United States and it is expressly provided that "the Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel" and "the officers and members of the crew shall be subject only to the orders of the Master" and not of any other government agent (GAA 4-4-42, Art. 3 A (d), R. 104).

employees (R. 5-6, 11). It alleged that, on the contrary, the METEOR was operated by the United States of America, War Shipping Administration, and that respondent's only relation to the vessel was that of general agent servicing the vessel in accordance with the provisions of the wartime standard form of agency agreement (R. 5-6, 11-12). We submit that on these facts, the extent of respondent's liability is fixed by *Caldarola v. Eckert*, 332 U. S. 155, where this Court recognized that under the rule in *Robins Dry Dock & Repair Co. v. Flint*, 275 U. S. 303, 307, third persons can gain no rights against the Government's agents by reason of the latter's contract with the United States and that general agents or ships' husbands employed by the United States to manage the accounting and certain other shoreside business operations of its vessels in accordance with the wartime standard form GAA 4-4-42 agreement do not thereby become owners *pro hac vice* or operators of government vessels. They are not, like the operating agent in *Brady*, nor as had been mistakenly conceded by the agent in *Hust*, operating the vessel for the Government<sup>9</sup> so as to be liable as employer *pro hac vice* of their civil-service masters and crews (Cf. 328 U. S. 723-724).

Thus, the essential problem presented by the effect of the wartime GAA 4-4-42 agreement on the rights of passengers transported by the United States aboard its vessels has already been fully explored so far as the needs of this case are concerned. It is well established that a contract vio-

<sup>9</sup> Petitioners gain nothing because the applicable War Shipping Administration regulations which complement the wartime 4-4-42 agreement were not placed in evidence (Pet. 4, 13). The burden of proving respondent's relation to the vessel was upon petitioners, plaintiffs below, not on respondent. But petitioners cannot take advantage of their omission. Government regulations are noticed judicially and those of the W. S. A. demonstrate conclusively that general agents are employed only to attend to the accounting and certain other shoreside business operations of the vessel so that their authority stops at the water's edge. The United States Maritime Commission has supplied a summary of those particularly applicable which is printed in Appendix B, *infra*, p. 22.

lation does not furnish a basis for tort liability to third persons, but the act which violates the contract must be a negligent one which, of itself, creates liability because, the contract aside, a duty is owing to such third persons. *German Alliance Ins. Co. v. Home Water Co.*, 226 U. S. 220, 227; *Moch Co. v. Rensselaer Water Co.*, 247 N. Y. 160, 167; *Christianson v. Breen*, 288 N. Y. 435; *Knight v. Atlantic Coast Line RR. Co.*, 73 F. (2d) 76, 77 (C. C. A. 5); *Kelly v. Chicago & A. Ry. Co.*, 122 Fed. 286, 289-290 (C. C. Mo.); *Floyd v. Shenango Furnace Co.*, 186 Fed. 539 (C. C. Minn.). On the record here it does not appear that respondent owed a duty to third persons, such as petitioners, to procure suitable seamen for employment by the United States nor does it even appear that respondent failed properly to perform the very limited duty of procurement which it owed the United States under the contract. Petitioners present neither argument nor authority that one acting as an agent to sell and issue tickets on behalf of a carrier is liable to the passengers for the negligence of the carrier's employees. Nor is there any better support for petitioner's contention that one acting as an agent to procure workmen for employment by another is liable to the other's invitees should the workmen prove unsuitable and harm result. Were these contentions of petitioner correct, agencies for railway and theater tickets, employment agencies and union hiring halls could no longer function. The unlimited character of such liability would render their operation impossible.

We submit it is thus clear that the court below correctly held that respondent, as general agent, had no liability to petitioners on their claim for negligence herein. Nor can it be successfully contended that the decision did not result from a proper consideration of the applicable decisions of this Court.

## CONCLUSION

The decision below is clearly correct and there is no conflict or other occasion for review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

LEON T. SEAWELL

*Attorney for Respondent.*

August 1948



## APPENDIX A

## TEXT OF STATUTES AND REGULATIONS

1. Revised Statute 1753 (5 U. S. C. 631), authorizing the President to prescribe regulations regarding civil service employment, provides:

The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.

2. The Civil Service Rules and Schedules, as codified in Title 5, Code of Federal Regulations (1943 Cum. Supp. pp. 1441, 1488), provide in pertinent part as follows:

## CIVIL SERVICE RULE H

SECTION 2.1 *Extent of the classified service.*—The classified service shall include all persons who have been heretofore or may hereafter be given a competitive status in the classified civil service with or without competitive examination, by legislative enactment, or under the civil service rules promulgated by the President, or by Executive orders covering groups of employees with their positions into the competitive classified service or authorizing the appointment of individuals to positions within such service. It shall include all positions now existing or hereafter created by legislative or Executive action, of whatever function or designation, whether compensated by a fixed salary or otherwise, unless excepted from classification

by specific affirmative legislative or Executive action. No right of classification shall accrue to persons whose appointment or assignment to classified duties is in violation of the civil service rules. [E. O. 7915, June 24, 1938, effective Feb. 1, 1939; 3 F. R. 1519.]

SECTION 2.3 *Exceptions from classification.*—(a) Positions in Parts 50 and 51 are excepted from the classified service.

(b) Appointments to the excepted positions named in Part 50 may be made without examination or upon noncompetitive examination. [E. O. 7915, June 24, 1938, effective Feb. 1, 1939, as amended by E. O. 8083, Apr. 10, 1939, effective May 1, 1939; 3 F. R. 1519, 4 F. R. 1577.]

SECTION 50.6. *Certain positions excepted from examination under § 2.3.*—The positions designated in this part are excepted from examination, but not more than one position shall be treated as excepted under any title unless a different number of positions be indicated (Rule XVI, sec. 1; E. O. 209, Mar. 20, 1903, 5 C. F. R. 16.1) [Regs. CSC, as of June 1, 1938].

§ 50.21. *United States Maritime Commission.*—(a) All positions on Government-owned ships operated by the United States Maritime Commission [E. O. 9004, Dec. 30, 1941; 7 F. R. 2],

NOTE: These positions were transferred to the War Shipping Administration by E. O. 9054; 7 F. R. 837.

3. War Shipping Administration Operations Regulations No. 12, Supplement No. 1 and No. 15, Directive No. 2, provide as follows:

## OPERATIONS REGULATION NO. 12

SUPPLEMENT No. 1, OCTOBER 7, 1944

Pertaining to All Vessels Owned by or Under Charter to the War Shipping Administration (Dry-Cargo and Passenger Vessels, Tankers, Colliers, and Small Craft)

Subject: Employee Status of Certain Personnel Employed by Agents.

This Supplement No. 1 to Operations Regulation No. 12 is issued for the purpose of clarifying the employment status of certain personnel employed by Agents in the conduct of the business of vessels or their cargo under the GAA, TCA, and BA agreements. It is clear from the provisions of Article 3 (d) of the General Agency Service Agreement that Master and crew members are employees of the United States but, no specific provision is made in the GAA, TCA, or BA agreements as to whether other personnel are employees of the United States or of the Agents, General Agents, or Berth Agents. Reading the provisions of the agreements as a whole it is also clear that, except for the Master, officers, and crew, persons employed by an Agent, General Agent, or Berth Agent are employees of such Agents and not of the United States.

1. Excepting only additions to the vessel's crew and employees of independent contractors, personnel employed by General Agents pursuant to Operations Regulation No. 12 and employees of the General Agent and not of the United States. Other personnel directly employed by Agents, General Agents, and Berth Agents, (and their Sub-Agents) to perform work in connection with vessels or their cargo and special work incident thereto, including shore gangs, checkers, tallymen, watchmen, guards, coal trimmers, and other extra labor, but excluding relief officers, shore relief, and crew members, are employees of such Agents and not of the United States.

2. The direct labor costs of the employees of Agents referred to in paragraph 1 shall be paid for from the corporate funds of the Agents, and, in accordance with Article 7 of the service agreements, the Agent may reimburse himself for such expenses from the special bank account established for use in connection with the service agreements. Such costs shall include, but without limitation, taxes (employer's contributions only) payable pursuant to the Federal Insurance Contributions Act (OAB tax) and to any state or federal unemployment insurance law in respect of the direct labor to which the same may be applicable; and premiums on workmen's compensation insurance carried pursuant to the Federal Longshoreman's and Harbor Workmen's Compensation Act and any state workmen's compensation laws in respect of the direct labor to which the same may be applicable. Such costs shall not include compensation for supervisory services or overhead of the Agent.

3. With respect to the work performed by the employees of Agents referred to in paragraph 1, the Agent shall be indemnified to the full extent provided under the applicable service agreement, regardless of the fact that the employees in question are employees of the Agent and not of the United States.

4. The interpretation and instructions contained in this Regulation need not be applied retroactively by the Agents.

(Sgd.) G. H. Helmbold,  
G. H. Helmbold,

*Assistant Deputy Administrator for Ship Operations.*

## OPERATIONS REGULATION NO. 15

DIRECTIVE No. 2, OCTOBER 8, 1942

The War Shipping Administration has been in receipt of frequent complaints about the lack of discipline and



the prevalence of disorder on United States flag vessels and other vessels owned and operated by the United States government. In this time of gravest national peril, it is intolerable that just and lawful discipline should not be maintained.

The War Shipping Administration expects the Master and his officers to maintain discipline on board all vessels.

All operators have been instructed by the War Shipping Administration that failure to support the Master and his officers in the lawful execution of their duties will not be tolerated.

To this end you are advised that:

1. The Master of a vessel has full discretion in signing on crew members and may reject any person seeking employment. This power carries with it both the legal and moral obligation to use it judiciously and only for proper cause.

Records shall be kept of the names of those rejected and of the reason for rejection and shall be submitted to the port office of the Recruitment and Manning Organization of the War Shipping Administration in the port in which the rejection occurs.

2. Upon every departure from any port, Masters are instructed to search the quarters and personal effects of all members of the crew, and to confiscate all liquor, weapons, and any equipment that in the judgment of the Master would endanger the crew, cargo or ship.

3. All complaints and disputes that cannot be settled to the satisfaction of all parties shall be held in abeyance, without prejudice, until the next arrival at a United States port; in no event shall any such dispute be allowed to interfere with the full performance of their duties by



all members of the crew, and that failure to observe this requirement shall constitute grounds for disciplinary action.

4. All Masters are instructed to keep the log book in such fashion that it shall record all acts and occurrences relevant to the question of the preservation of good order and discipline. All serious breaches of discipline shall be reported to the operating agent of the War Shipping Administration in the first port touched after the violation has been committed.

(Sgd.) E. S. Land

E. S. Land

*Administrator.*

## APPENDIX B

UNITED STATES MARITIME COMMISSION  
WASHINGTON

August 18, 1948

Leon T. Seawell, Esquire  
Hughes, Little & Seawell  
Wainwright Building  
Bute & Duke Streets  
Norfolk 1, Virginia

Dear Mr. Seawell:

This will refer to the request of the Department of Justice in connection with the case of *Weade v. Dichmann, Wright & Pugh, Inc.*, that the Maritime Commission, as successor to the War Shipping Administration, supply information concerning the applicable Operations Regulations governing the duties of general agents under the war-time standard form GAA-4-4-42 agreement.

It must be understood at the outset that general agents were mere ship's husbands limited to the performance of shoreside business operations under detailed supervision of the War Shipping Administration and to serving as the principal channel of communication between the War Shipping Administration officials and the masters and crews with which the United States manned, navigated and physically managed its vessels. The GAA 4-4-42 agreement made the agent's every action subject to "such directions, orders, and regulations" as the Government should prescribe. And in fact, agents' activities were controlled in the most minute detail through extensive series of "general orders," "operations regulations," "travel regulations," "fiscal regulations," "auditing and accounting instructions," "insurance instructions," "legal bulletins," and "medical directives" issued by the respective units of

the War Shipping Administration pursuant to the provisions of Article 2 of GAA 4-4-42.

Supervision and compliance was maintained with the aid of some 5,000 employees located in the principal ports as well as by a small headquarters staff at Washington. Possession and control of the vessels remained at all times in the United States and physical operation was the exclusive responsibility of the vessel's master as a direct agent and employee of the United States who, under Article 3A(d) of GAA 4-4-42, was employed by the Government to have and exercise in its behalf the fullest control, responsibility and authority, exclusive of the shoreside agent, in respect of the navigation and management of the vessel.

Of special pertinence are the Operations Regulations issued to general agents. These show that the agents were allowed no authority and scant influence over the vessels and their masters but were rigorously confined to serving as the channel of communication between War Shipping Administration and its shipmasters and to the management of the accounting and certain other shoreside business operations of the vessels. As even the Operations Regulations are extremely voluminous, there is attached a summary of the more important material:

Very truly yours,

(Sgd.) Francis B. Goertner

General Counsel

Enclosure

## SUMMARY OF PERTINENT OPERATIONS REGULATIONS

Operations Regulation No. 4 provides: "*General Agents shall assign to each new vessel . . . a master, chief mate, chief engineer and first assistant engineer, approximately*

thirty (30) days prior to the completion and delivery date. All other officers and department heads, including radio operators and chief stewards as authorized by War Shipping Administration shall be assigned approximately ten (10) days prior to such date \* \* \* The unlicensed personnel, except as otherwise provided for herein, shall be placed on the vessel effective as of the date of delivery to the general agent."

Regulation No. 9, Supplement No. 1 provides: "*General Agents are authorized and directed to employ as a member of the crew, one junior third mate \* \* \** The terms of employment shall be in accordance with the General Agent's applicable collective bargaining agreement as provided in Article 3A (d) of the Service Agreement."

Regulation No. 12, Supplement 1, provides: "It is clear from the provisions of Article 3A (d) of the General Agency Service Agreement that *Masters and crew members are employees of the United States*, but no specific provision is made in the GAA, TCA, or BA agreements as to whether other personnel are employees of the United States or of the Agents, General Agents, or Berth Agents. \* \* \* *Excepting only additions to the vessel's crew and employees of independent contractors, personnel employed by General Agents pursuant to Operations, Regulation No. 12 are employees of the General Agent and not of the United States. Other personnel directly employed by Agents, General Agents, and Berth Agents (and their Sub-Agents) to perform work in connection with vessels or their cargo and special work incident thereto, including shore gangs, checkers, tallymen, watchmen, guards, coal trimmers, and other extra labor, but excluding relief officers, shore relief, and crew members, are employees of such Agents and not of the United States.*"

Regulation No. 15, Directive No. 2 provides: "The master of a vessel has full discretion in signing on crew members and may reject any person seeking employment \* \* \*. Records shall be kept of the names of those rejected and of the reason for rejection and shall be submitted to the port office of the Recruitment and Manning Organization of the War Shipping Administration in the port in which the rejection occurs."

Regulation No. 16, Directive No. 3, provides: "*When vessels are part of an active task force or are operating in theatres of war, the masters are subject to the order of the Commanding Officers of the appropriate force or theatre, and disobedience on the part of the master and crew to such orders may subject the master and crew to military discipline. When vessels are not part of an active task force or are not operating in theatres of war, the control and authority over the vessel rests solely with the master, subject to the directions of the War Shipping Administration.*"

Regulation No. 30 provides: "*General Agents \* \* \* are instructed to notify the masters of such vessels to bolt down securely deep tank covers even when the deep tanks are used for carrying dry cargo.*"

Regulation No. 42 involves safety precautions aboard merchant vessels and provides: "*General Agents \* \* \* are therefore directed to instruct the maser and chief engineer aboard each vessel to ascertain prior to proceeding to sea, the condition of the floor plates in the engine room and fireroom of their vessel \* \* \* to take the necessary steps to have them firmly bolted.*"

Regulation No. 43 involves fuel oil conservation and provides: "*General Agents are directed to instruct*



*masters* that wherever practical, water shall be utilized for ballast purposes in lieu of fuel oil.

Regulation No. 46 requires General Agents to issue appropriate instructions to masters and others regarding the War Shipping Administration's regulations that "*responsibility for the stowage of cargo, including the quantity to be loaded, the distribution of the cargo and the manner of stowage, should rest with the master.*" Shore personnel of WSA and General Agents "*should go no further than to make suggestions, subject always to the master's approval or disapproval, and should be careful to avoid the direction or supervision of the stowage of cargo.*"

Regulation No. 48 provides: "*General Agents are directed to instruct masters that stores, supplies, and equipment are to be ordered through the vessels' port agents.*"

Regulation No. 50 involving crew advances in foreign ports provides: "*General Agents are . . . directed to caution masters and crews of vessels calling at ports in foreign countries to discontinue payment in dollar currency and to refrain from transactions in United States money.*"

Regulation No. 51, Supplement 2, relates to pollution of navigable waters of the United States and provides: "*All agents of the War Shipping Administration are hereby directed to give a copy of this Regulation to the master of each vessel . . . Masters shall be instructed to post this matter on the ship's bulletin board or otherwise bring it to the attention of all ship's personnel.*"

Regulation No. 52 provides: "*General Agents are therefore directed to instruct masters of all vessels . . . to keep shaft alley doors closed at all times except when it becomes necessary to fill bearing reservoirs to make re-*

pairs \* \* \* General Agents are further directed to *instruct masters* that a notice to this effect must be posted adjacent to the shaft alley door \* \* \*"

Regulation No. 54 relating to pilferage of cargo provides: "*General Agents are directed to notify masters* that even under wartime conditions, it is still the responsibility of the master and his officers to see that cargo is delivered at destination free of damage and pilferage."

Regulation No. 56 requires the *General Agent* to instruct *masters* to familiarize themselves with protective measures relating to anti-gas preparations for merchant vessels.

Regulation No. 58 concerns the status of military and naval personnel assigned aboard merchant vessels and directs the general agents to *instruct* the masters in connection with and to comply therewith.

Regulation No. 62 provides: "\* \* \* *each general agent is instructed to advise both the masters and chief engineers* of all vessels under their jurisdiction that fuel oil, and fresh water piping system suction are to be opened only on one oil and one water line when not fully in use \* \* \*"

Regulation No. 63 concerning the employment of staff officers provides: "*General Agents \* \* \* are directed to employ \* \* \* a junior assistant purser* at a basic monthly salary of \$120.00."

Regulation No. 81 provides: "*General Agents of the War Shipping Administration are directed to instruct masters* to inform Armed Guard officers as to the time and place of convoy conferences in sufficient time to accompany the masters to the conferences."

Regulation No. 83, provides: "*General Agents are hereby directed to instruct ship's personnel* of the follow-

ing practice to be observed in establishing quantities of bunker fuel oil acquired or discharged \* \* \*."

Regulation No. 87 directs general agents that "*All masters and pursers shall be instructed to submit to the General Agent an accurate and detailed statement of expenses properly incurred for account of the vessel.*"

Regulation No. 99 provides: "General Agents are expected to provide the War Shipping Administration complete information regarding any irregularities concerning ships' stores, supplies and equipment, including slop chest property \* \* \* *General Agents are directed to instruct all masters to prepare form SA-1, Master's Report of Loss, copy attached, on every occasion \* \* \* General Agents should advise masters regarding their requirements of copies of the reports in addition to the copies required by the WSA.*"